



LEGALS ZINE

Camp for Climate Action,
2008



**Always Was,
Always Will Be
Aboriginal Land**

Acknowledgement of country

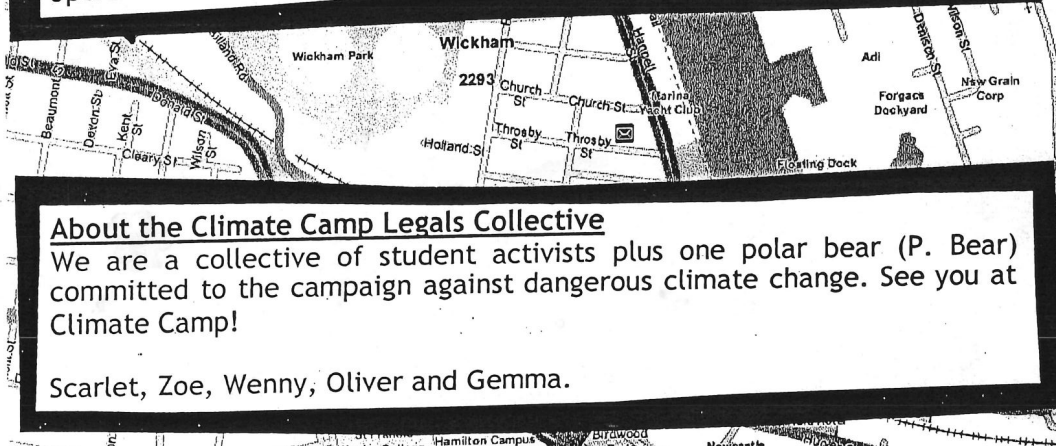
We recognise and pay respect to the Aboriginal nations and traditional owners of the land. We acknowledge the land was and always will be an integral part of the spiritual and cultural histories of Aboriginal peoples. We recognise that sovereignty has never been ceded.

This zine was created on the land of the Gadigal people of the Eora nation. If you are reading this, you are on Aboriginal land.

About this zine

This booklet or 'zine' has been written and compiled by the Camp for Climate Action Legals Collective. It aims to be a resource to help you make informed decisions about actions you may consider taking at Climate Camp 2008, a Nonviolent Direct Action Camp.

This zine should not be read as formal legal advice - it is intended to guide you through the legal aspects of direct action. It also explains the operation of legal support during and after Climate Camp.



About the Climate Camp Legals Collective

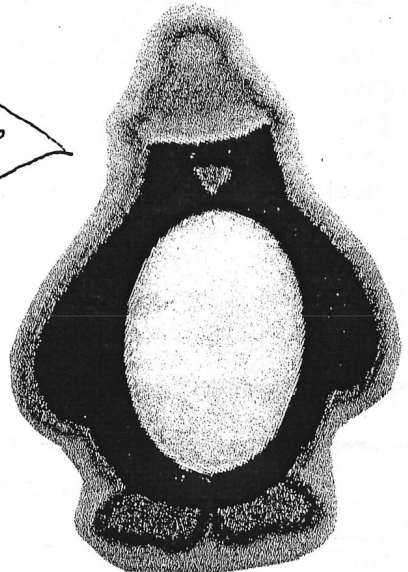
We are a collective of student activists plus one polar bear (P. Bear) committed to the campaign against dangerous climate change. See you at Climate Camp!

Scarlet, Zoe, Wenny, Oliver and Gemma.

Contents

Legal Support @ Climate Camp	4-5
Why Direct Action?	6
P. Bear Prepares for Direct Action	7
P. Bear Gets Arrested	8-10
P. Bear Goes to Court	11
Tips for Police Liaison, and Arrest Solidarity	12
What Might P. Bear Be Charged With?	13-17
Super Penguin's Story	18-19
Legal Contacts	20

Climate change
SUCKS!



LEGAL SUPPORT @ CLIMATE CAMP

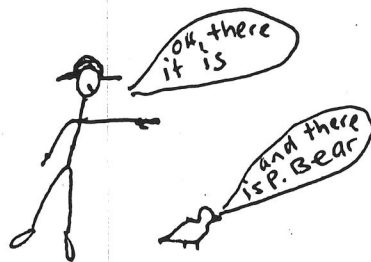
The Legals Collective is hoping to help out in a few key ways at and after Climate Camp by:

- Providing **legal information**, such as this zine
- Facilitating lawyers to answer **specific legal questions** during the camp
- Helping to coordinate the **Human Rights Monitors (HRM)** crew during the camp
- Running **workshops** on direct action and the law, and HRM training
- Collating **updates** on any arrests that occur during the camp
- Facilitating **continuing support** for **arrestees** after Climate Camp, including linking people with pro bono lawyers

The Legals Tent and Noticeboard

The Legals Tent will be the base for most of the legal support provided at Climate Camp. Come to the Tent to find out about legal information, speak with lawyers and to see the Legals Noticeboard. HRMs will also be meeting at the Tent. Come and meet P. Bear!

Please see the roster below for when people will be at the Tent to speak with someone from the Legals Collective or a lawyer.



When we will be at the Legals Tent:

Thursday 10th	Friday 11th	Saturday 12th	Sunday 13th	Monday 14th	Tuesday 15th
	11-12noon	11-12noon	All day	All day	11-12noon
3-4pm	3-4pm	3-4pm	8am- 11pm	8am- 11pm	3-4pm

A Human Rights Monitor (HRM) attends protests to monitor and record police misbehaviour and misconduct. Come along to the training on Friday to find out about being a HRM during Climate Camp!

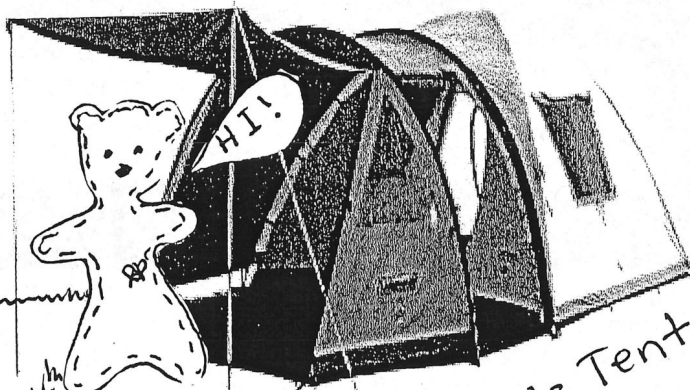
LEGALS NOTICEBOARD

on this noticeboard you will find...

- The roster (below)
- Roster of HRMs
- Legal workshops @ climate camp - check your program!!
- updates about any arrests
- sections where you can leave questions
- Requests for support from the legals collective
- space to leave messages, tips and info



Legals Phone
0414 077 726



The Legals Tent



P. Bear asks why
direct action?

Direct action can involve risking a breach of the law. But laws can be unjust or uphold unjust policies. Climate change is now a 'mainstream' issue and a recognised urgent threat - and yet governments and other decision-makers continue to do as little as they can get away with. This is criminal behaviour.

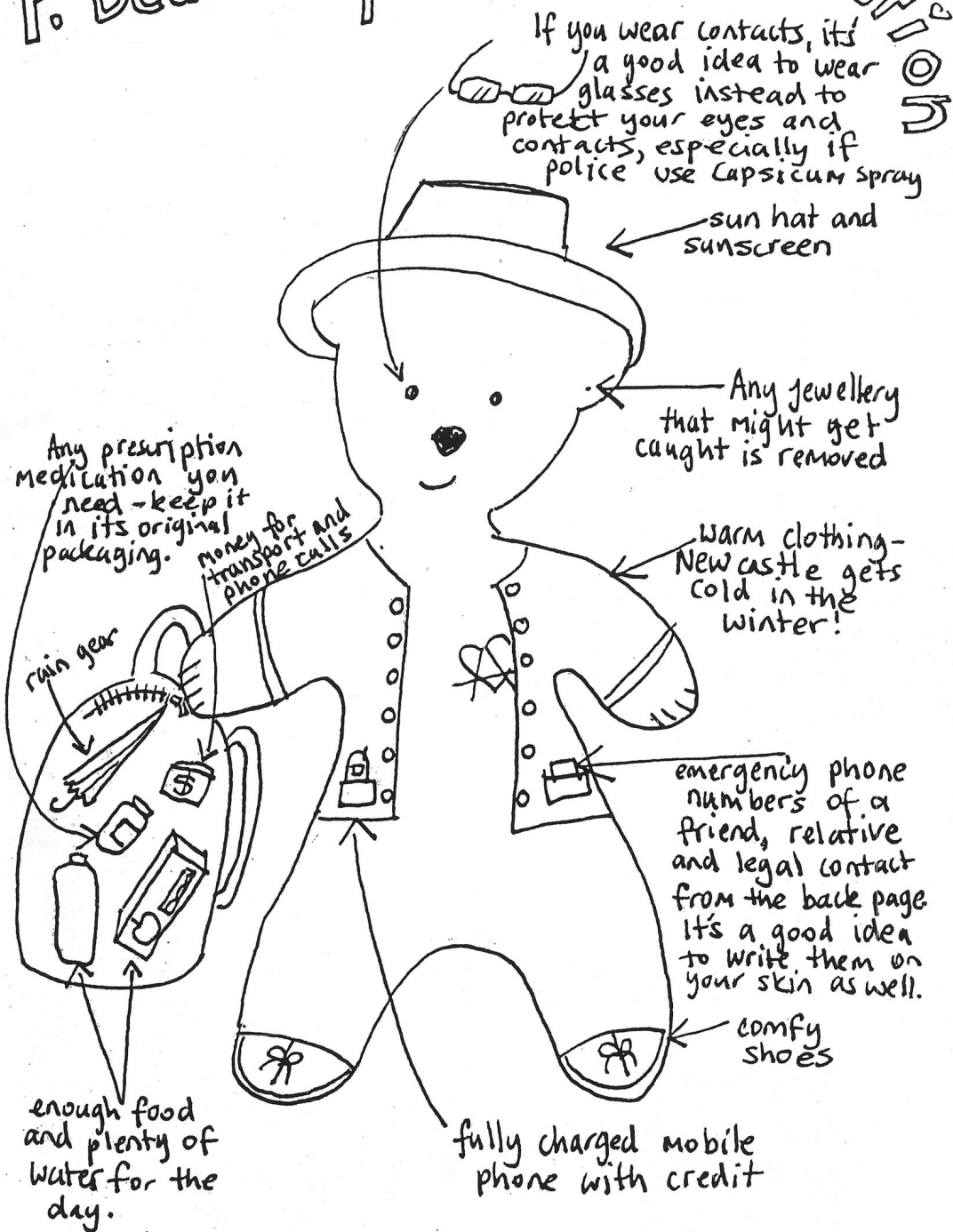
We can choose to say, 'Enough!' We can decide to work together and leverage the greatest political pressure we can. Direct action is direct political pressure, and cannot be ignored. It shows and dramatises the conflict: between dirty coal and profit, and clean renewable and people.

We inherit a rich history of successful direct action movements: Gandhi's salt march against British rule in India; the Jabiluka blockade 10 years ago that stopped a uranium mine being built in the Kakadu National Park in the Northern Territory; and many, many others. These movements followed a philosophy of nonviolent direct action that is about strategic, organised resistance to end the violence of profiteers.

Direct action does not only involve people taking action - there are many different and equally important roles in a successful direct action movement. Direct action is about utilising our collective skills and power to build a broad, sharp social movement that can win.

Now is our time to take direct action for climate justice and a living future. The first Camp for Climate Action in Australia, 2008, seeks to facilitate a direct action strategy embraced by a diverse, vibrant movement of people. It is the time to put words aside and take action together!

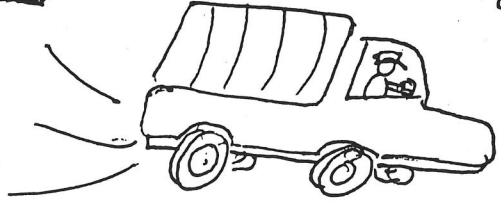
P. Bear Prepares 7 direct actions



P. Bear gets arrested



2 Aride in the paddy wagon



The police should tell you they are arresting you and why. NB: For Climate Camp, the police have indicated that they may issue 'field CANS' provided you have ID on you. Court Attendance Notices mean you don't have to go to the police station - just skip to 'the courthouse'.

5



about 2 weeks later...



This whole arrest process should not exceed 4 hours. However, this time doesn't include things like travel time to the station.

4 charges & bail

8

1

from 4 and 5

In the paddy wagon and at the cop shop - answering police questions

Except for giving your name and address, you have the right to remain silent. Be prepared for police to be persistent with their questioning. It's often best to keep saying "no comment" even to really obvious questions, like "were you in Newcastle today?" so it looks like you have nothing at all to hide or say.



In custody

At the cop shop, a person called the Custody Manager will take your belongings, document items, and then return your belongings after you have been processed. You have the right to things like water, "reasonable" refreshments and medical attention. If you need any of these things, just ask the Custody Manager.

The police will take your:



+



But, you can later ask for your fingerprints and photograph to be destroyed if you are found not guilty or you get a 's10' - that is, you are found guilty but let off without a conviction.

Searches

Police have pretty broad search powers once you've been arrested. The police are allowed to ask you to open your mouth and shake your hair. As well:

- They can ask you to take off your shoes and jackets; or
- They can pat you down; or
- In some circumstances, they can do a strip search. The police need to be "reasonably" satisfied that the "seriousness and urgency of the circumstances require" a strip search. This leaves a lot to police discretion, but reminding them of this particular "reasonable belief" that they need to establish, may be helpful in preventing a strip search
- They are never allowed to perform a cavity search

The police should, as "reasonably practicable", conduct searches by someone of the same gender, and searches should be done in private. They must not search and question you at the same time.



You have a right to communicate with a friend or relative *and* a lawyer. You can ask them to attend the station and if they do, the police must take reasonable steps to allow you to talk to the person in private.

NB If you are a "vulnerable" person⁹ eg under 18 or Aboriginal or Torres Strait Islander you have extra rights, like having a support person at the station

GETTING CHARGED

The police may decide either to charge you or they may release you without charge:

- If **charged**, the police will give you a charge sheet of your charges, a fact sheet of their version of the alleged offence, and a Court Attendance Notice (CAN) to appear in court at a later date (usually 2-3 weeks later). Then you are released on bail (see below). The only situation in which you would not be released is if you are refused bail (see below); or

- If **released without charge**, this may be the conclusion of the matter or alternatively, you may receive a summons to appear in court at a later date.

BAIL

Bail means an agreement between you and the police that you will appear in court on the specified date in the CAN. If you are charged with an offence, the police will then either release you on bail or refuse bail:

- There is a **presumption in favour of bail** for most offences. The police may impose certain bail conditions like not returning to the protest site where you were arrested. For Climate Camp, the police have indicated that conditions will be fairly strict (e.g. staying 500m away from any coal infrastructure) if you are arrested more than once over the course of Climate Camp.

- o **Refusing bail conditions:** You do not have to agree to the conditions of bail. However, if you do not agree, bail will probably be refused - see below. If you accept bail conditions, you can then decide to ask a court to vary the conditions.
- o **Breaching bail conditions:** While you are on bail, it is an offence to breach any bail conditions, which may result in a new offence and make it harder to get bail in the future.

- If bail is refused, you will be brought before a local court as soon as "reasonably practicable." Thus if you are arrested late in the day and refused bail, you may be held overnight. When you are brought before court, you have the right to access a Legal Aid lawyer to represent you.





P. BEAR GOES TO COURT

Once released on bail, you generally have two weeks before your first appearance in court (the date will be in the CAN). You should speak to your lawyer and decide whether or not you are going to plead guilty.

- **Pleading guilty:** If you plead guilty, you will be sentenced on your first court appearance. This is the fastest way to resolve the court process but involves accepting any punishment the court decides to impose, unless you decide to appeal its decision. If it is your first offence, there are a number of possible outcomes. For instance, you may receive a fine or a 's10' (no conviction recorded).

- **Pleading not guilty:** If you plead not guilty, then your case will be resolved over a longer period of time (sometimes six months or more) and involve a number of court appearances. During this process, charges may be dropped or new ones added. During this time you may be subject to ongoing bail conditions, but you will generally be required only to appear in court for very brief periods every month or so.

P. Bear - remember to have a police liaison!

Each action team (or affinity group) should think about nominating one or two people to be a police liaison for the group. A police liaison acts as a conduit of information in an action, between police and those taking part in an action - not as a decision-maker or to portray yourself as a decision-maker. Tips for the police liaison:

- One of a police liaison's most important roles is to negotiate with police in the interests of the people involved in the action. Make sure you've discussed your role within your action team, including your scope and limits
- Know your legal rights and the phone numbers of legal support
- Know important details of people in your action team, including full names and any medical needs, as well as their boundaries and what they do and don't want shared with the police
- Have a note pad and pen so that you can keep a record of events and police officers' names and actions
- Identify yourself as the designated police liaison to the police officer
- Be aware that you may be one of the first people arrested as you may be seen as a leader, no matter how much you try to tell the police otherwise
- Be professional and polite but on guard with police

The police negotiators that have been speaking with the Climate Camp police liaisons have indicated that they would like to be contacted by actions teams for the Monday action day of the camp. Please contact the Legals Collective at the Legals Tent or on 0414 077 726 if you'd like the police negotiators' contact details, or to discuss further ways to liaise with the police effectively.

P. Bear - if you get arrested - remember to tell us!

If there are any arrests, please feel free to contact the Legals Collective. We are happy to collate updates about any arrests and help facilitate arrest solidarity. After the Camp, we are interested in facilitating continuing support for arrestees including linking people with pro bono lawyers, and considering the role of solidarity with protestors who are arrested in the ongoing climate movement after Climate Camp.

What might P. Bear be charged with?

The following pages go through some of the possible offences that activists may be charged with. Whether and what charges are laid depends on numerous factors including the kind of action being taken, but many are largely down to police discretion.

We haven't included all the penalties for the offences, particularly as they can vary. Please come and speak to us at the Legals Tent if you would like more specific information or have any questions.

REALLY COMMON OFFENCES AT PROTESTS THAT CAN BE AVOIDED

Be wary of the following offences. Police often use them indiscriminately at protests and often they can be avoided.

Offensive language

It is an offence to use offensive language without a reasonable excuse in a public place, even if you don't think the language is offensive.



**Possession of prohibited substances,
knives or tools and spray paint**

It is an offence to carry drugs, knives and spray paint. The chance of being searched at a rally is much higher, so you would be wise to avoid having these items on your person!

Hindering police and resisting arrest

It is an offence to resist or hinder a member of the police force in the execution of her/his duty, including the making of an arrest. 'Resist' means opposing by the threat or use of force. 'Hinder' means making an arrest or other police action more difficult.

It is also an offence to incite someone else to assault, resist or hinder police. Incitement means to rouse, stimulate, urge or spur on, stir up or animate; it is not necessarily restricted to starting or initiating.

Assaulting police

Related to the offence of hindering police and resisting arrest is an offence to assault or wilfully obstruct police, and other officers, in the execution of their duty. Assault can be both physical and verbal. Therefore, threats of violence to police and other officers in the heat of the moment can have serious consequences. Attempting to cross police lines can also amount to assaulting police.



Disguises

Under the *Crimes Act*, it is an offence where a person 'has his face blackened or otherwise disguised, or has in his possession the means of blackening or otherwise disguising his face, with intent to commit a felony or misdemeanour.'

REALLY COMMON OFFENCES RELATED TO DIRECT ACTION

Trespass

Trespass is a very common public order offence often used against protestors and picketers. A person may be charged with trespass if s/he enters into 'inclosed lands' without lawful excuse or the consent of the person in charge of those lands, or who remains on those lands after being asked to leave.

'Inclosed lands' includes any lands, public or private, surrounded by a fence or barrier or even partially by a fence or barrier. 'Inclosed lands' also includes lands surrounded by a natural feature such as water.

The usual penalty for trespass is a \$200 fine, but can be as much as 10 penalty units (\$1,100).

Property damage

'Locking on' - that is, using some form of device to prevent your removal from a restricted area or a piece of machinery, has traditionally resulted in a charge of trespass. Recently, there have also been attempts to use 'malicious damage' as a further charge, as happened with a climate change-related direct action in Newcastle before APEC last year (see Super Penguin's story in a few pages).

These charges have subsequently been dropped; however, it shows the possibility of being charged with this offence. Property damage involves damaging property either intentionally or recklessly. The maximum penalty is increased to 7 years imprisonment if it occurs during a 'public disorder.'

UNCOMMON BUT POSSIBLE OFFENCES

Riot

The offence of riot is defined as an offence where 12 or more persons present together use or threaten to use violence. Violence is defined broadly as including any violence towards property as well as persons. The maximum penalty for riot is 15 years imprisonment.

Affray

The offence of affray occurs where a person threatens or uses violence towards another person where a person of reasonable firmness would fear for their safety. The maximum penalty for affray was increased in the wake of the Cronulla Riots from 5 to 10 years.

Unlawful assembly

Charges for this offence have been very rare (only about 14 charges in the past 10 years). However, this offence is defined as one if a person 'knowingly joins an unlawful assembly or continues in it.' The maximum penalty is six months imprisonment for unlawful assembly. However, it is much more common for protesters to be charged with offences such as obstructing traffic.

Notice may be given of a public assembly to the Police Commissioner 7 days before the proposed event under the *Summary Offences Act 1988* (NSW) s23. If the Commissioner does not oppose the assembly or the Supreme Court does not issue an order prohibiting the event, then it is an 'authorised assembly.' Just because an assembly is unauthorised doesn't necessarily mean that it will run offence-free; however authorisation means that the offences of unlawful assembly and obstruction are inapplicable.

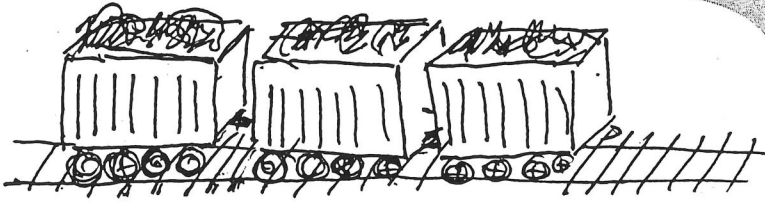
Conspiracy

The offence of conspiracy occurs when two or more people plan to commit a criminal offence or a tort.

RAILWAY OFFENCES

Obstructing a railway

This offence involves causing the passage of rolling stock to be obstructed. It is also an offence to knowingly assist the commission of this offence. The maximum term of imprisonment is 2 years.



Throwing objects at a train or vehicle
It is an offence to throw objects at train whether it hits the train or not.

Regulations

There are also a number of regulations that make it an offence to smoke, drink alcohol or carry weapons on railway land. They also provide for an offence of hindrance or obstruction, and crossing running lines.

OTHER COAL PORT OFFENCES

There are a number of offences relating particularly to the Newcastle Coal Port, particularly relating to vessels and lands. If you want more information on these specific offences, come and talk to us at the Legals Tent and we can give you a fact sheet and connect you with a lawyer.



Super Penguin's Story - Shutting down the world's largest coal port!

P. Bear: Hi Super Penguin! I heard you did a sweet action last year. What did you do and why?

Super Penguin: Hi P. Bear!

In the week leading to the main Asia-Pacific Economic Cooperation (APEC) meetings in Sydney, a whole bunch of us organised a direct action at the Carrington coal port terminal in Newcastle. Two teams went over the fences - one team 'locking-on' to four different coal stackers and reclaimers with support people; and another team did a sweet banner drop from a coal loader that said: 'APEC Fuels Climate Chaos - This Is Action on Climate Change'. There were also people outside participating in a sweet rally, and doing media interviews.

We did the action because APEC was all about 'clean' coal technology, 'aspirational' emission reduction targets, and the general continuation of fossil-fuelled neoliberalism - yuck! We participated in the big rallies against APEC that had been organised too, but we didn't just want to be trapped within the 'protestors' v. 'police' show. It can feel quite disempowering, and it seems easy for the government to ignore us all over again when the rally is over.

P. Bear: What do you think your action achieved?

Super Penguin: We shut down the world's biggest coal port for four hours - that was pretty sweet. The message that members of the public are willing to disrupt fossil fuel is itself a powerful one and will have reverberations on decision-makers. The organising and undertaking of the action built the level of political discussion in, the skills and experience of our grassroots-fed networks. We achieved quite extensive media coverage about the role of coal, and coal exports in climate change amid the rhetoric about 'action on climate change', and I think we were inspiring!

But that's not to say there weren't limitations with the action. The nature of it meant that it was organised within already-existing activist networks. What's so exciting about Climate Camp is that it's a mass and public call-out for direct action on coal. Organising for the camp has involved reaching out to different groups and building connections for a strong and diverse climate movement. I'm looking forward to seeing the continuation and strengthening of this at Climate Camp!

P. Bear: What were the legal consequences of your action?

Super Penguin: 11 of us were arrested and charged with trespass, and those involved in the 'locking-on', including the support people, were also charged with malicious damage. The charge of malicious damage was quite absurd - we didn't cause any physical damage at all! Malicious damage charges have been levelled against activists involved in similar direct actions in the past, but they've all been dropped before court or unsuccessful in court.

Because we pled not guilty to the extra charge, it took a looong time for our court stuff to wrap up - about nine months. We think the state was waiting on the outcome of another case where they were trying to prove malicious damage charges against Greenpeace activists involved in a climate direct action. When they failed, they finally dropped the charges against us too. The rest of the court proceedings went pretty smoothly - those for whom it was their first offence were given 's10s' - they pled guilty to trespass, but no conviction was recorded and they were given a 12-month good behaviour bond. For people with other offences, they received convictions, \$200 fines and ordered to pay court costs of \$70.

This was my first arrest. Being prepared for it and being with my friends at the time and through the court stuff made a big difference! Being processed at the police station altogether was not too bad, and being able to support each other through court stuff was awesome! The lawyer who helped us was someone who heard about us through Legal Aid Newcastle, and ended up representing us pro bono - he was pretty cool. Overall, not a bad arrest and court experience I would say!



LEGAL CONTACTS

Contacting the
Climate Camp Legals Collective:

Ph: 0414 077 726

Email: legals@climatecamp.org.au

Or during Climate Camp, come to the Legals
Tent - see pages 4 and 5 to find out when
we'll be there.

Other helpful legal contacts:

Legal Aid Helpline: 1300 888 529

Newcastle Legal Aid: 4929 5482

Aboriginal Legal Service: 9318 2122

Young Offenders Advice Line: 1800 101 810



P. Bear was charged with trespass, but was given a s 10. The malicious damage charges were thankfully dropped. P. Bear is currently resting in the Great Barrier Reef before thinking about getting involved in Climate Camp 2009. See you there!